IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8380 OF 2005.

M/s.Parikh Electrical Syndicate. ... Petitioner.

V/s.

The Kapol Co-operative Bank Ltd. ... Respondent.

D.S.Sakhalkar for the petitioner.

S.M.Vyas for the respondent.

CORAM: V.C.DAGA, J.

DATED: 8th December 2005.

P.C.:

. Heard learned counsel for the petitioner.

2. The petitioner has suffered a decree of eviction and possession on the ground of having committed nuisance and also for having committed breach of the conditions of the tenancy.

3. It is not in dispute that so far as common passage/ corridor running from block No.107 to 109 is concerned, the same has been encroached upon by the petitioner by putting their goods therein though it is not a part of its tenanted premises.

4. It is also not in dispute that the petitioner in breach of terms of tenancy has locked the collapsable door put at the entrance

point of the said corridor so as to prevent other tenants from using the same. With the result, the petitioner is exclusively using the said passage/ corridor and depriving the other tenants the beneficial use thereof. Since the petitioner has also put its own material in the said passage and thereby obstructed the usage of the corridor; it is, naturally, creating nuisance to the adjoining tenants. These facts are not in dispute. Thus, reliance placed by the learned counsel for the petitioner on the judgment of this Court in the case of **Hotel Rosalia v. M/s.Metro Hotels**, 2001 (2) Mh.L.J. 881 is misplaced. In the cited judgment factum of nuisance was not proved. However, in the case at hand the facts are proved on the basis of admissions given by partner of the petitioner itself. In this view of the matter, no case is made out to interfere with the impugned order.

5. In the result, petition is dismissed with no order as to costs.

(V.C.DAGA, J.)